

AMENDED IN SENATE FEBRUARY 27, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

**SENATE BILL**

**No. 39**

**Introduced by Senator Speier**

February 8, 2001

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An act to amend Sections 216 and 362 of, and to add Section 761.3 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 39, as amended, Speier. Public Utilities.

(1) Under existing law, ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission as an exempt wholesale generator is not sufficient to make a corporation or person a public utility under the Public Utilities Act, a violation of which is a crime.

This bill would delete this provision. To the extent that this change would expand the class of utilities subject to the act, this bill would impose a state-mandated local program by changing the definition of an existing crime.

(2) Existing law requires the commission in proceedings to ensure that facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining open competition and avoiding an overconcentration of market power.

This bill would require the commission to ensure that generation facilities located in California are operated by the persons or corporations who own or control them in a manner that assures their availability to maintain the reliability of the electric supply system. The bill would authorize the commission to accomplish this by issuing

orders and directives ~~as it deems that it determines to be necessary~~ and appropriate, after a hearing. The bill would authorize the commission to ~~prevent the exercise of market power~~ *ensure electric service reliability* by prohibiting economic or physical withholding of the output of a divested generation facility from delivery to or for the benefit of California end users.

(3) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electric corporations.

This bill would authorize the commission, *in consultation with the applicable control area operator*, to prescribe inspection, maintenance, and operating practices and procedures for any electric plant used to produce or generate electric energy located in the State of California that is necessary to ensure public health and safety and electric service reliability and adequacy.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Electric generating facilities and powerplants in California  
4 are essential facilities for maintaining and protecting the public  
5 health and safety of California residents and businesses.

6 (b) It is in the public interest to ensure that electric generating  
7 facilities and powerplants located in California are effectively and  
8 appropriately maintained and efficiently operated.

9 (c) Owners and operators of electric generating facilities and  
10 powerplants are public utilities subject to the control of the  
11 Legislature.

12 SEC. 2. Section 216 of the Public Utilities Code is amended  
13 to read:

216. (a) “Public utility” includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(c) When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, that in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(d) Ownership or operation of a facility that employs cogeneration technology or produces power from other than a conventional power source or the ownership or operation of a facility which employs landfill gas technology does not make a corporation or person a public utility within the meaning of this section solely because of the ownership or operation of that facility.

(e) Any corporation or person engaged directly or indirectly in developing, producing, transmitting, distributing, delivering, or selling any form of heat derived from geothermal or solar resources or from cogeneration technology to any privately owned or publicly owned public utility, or to the public or any portion thereof, is not a public utility within the meaning of this section solely by reason of engaging in any of those activities.

(f) The ownership or operation of a facility that sells compressed natural gas at retail to the public for use only as a motor vehicle fuel, and the selling of compressed natural gas at retail from that facility to the public for use only as a motor vehicle fuel, does not make the corporation or person a public utility within the meaning of this section solely because of that ownership, operation, or sale.

(g) The ownership, control, operation, or management of an electric plant used for direct transactions or participation directly or indirectly in direct transactions, as permitted by subdivision (b) of Section 365, sales into the Power Exchange referred to in Section 365, or the use or sale as permitted under subdivisions (b) to (d), inclusive, of Section 218, shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, participation, or sale.

SEC. 3. Section 362 of the Public Utilities Code is amended to read:

362. (a) In proceedings pursuant to Section 455.5, 851, or 854, the commission shall ensure that facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining open competition and avoiding an overconcentration of market power. In order to determine whether the facility needs to remain available and operational, the commission shall utilize standards that are no less stringent than the Western Systems Coordinating Council and North American Electric Reliability Council standards for planning reserve criteria.

(b) The commission shall ensure that generation facilities located in California are operated by the persons or corporations who own or control them in a manner that ensures their availability to maintain the reliability of the electric supply system. The commission may accomplish this by issuing orders and directives ~~as it deems that it determines to be necessary and appropriate, after a hearing. The commission may prevent the exercise of market power~~ *ensure electric service reliability* by prohibiting economic or physical withholding of the output of a divested generation facility from delivery to or for the benefit of California end users.

SEC. 4. Section 761.3 is added to the Public Utilities Code, to read:

1     761.3. Notwithstanding Section 216, the commission, *in*  
2     *consultation with the applicable control area operator*, may  
3     prescribe inspection, maintenance, and operating practices and  
4     procedures for any electric plant used to produce or generate  
5     electric energy located in the State of California that is necessary  
6     to ensure public health and safety and electric service reliability  
7     and adequacy. Nothing in this section authorizes the commission  
8     to regulate rates for wholesale electric energy transactions in  
9     interstate commerce.

10    SEC. 5. No reimbursement is required by this act pursuant to  
11    Section 6 of Article XIII B of the California Constitution because  
12    the only costs that may be incurred by a local agency or school  
13    district will be incurred because this act creates a new crime or  
14    infraction, eliminates a crime or infraction, or changes the penalty  
15    for a crime or infraction, within the meaning of Section 17556 of  
16    the Government Code, or changes the definition of a crime within  
17    the meaning of Section 6 of Article XIII B of the California  
18    Constitution.

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